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No. 90-93

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1990

R.D. LANGENKAMP, Successor Trustee of the Bankrupt Estate of Republic Trust & Savings Company,

PETITIONER

v.

C.A. CULP, JULIA CULP, and CULP DISTRIBUTING COMPANY

RESPONDENTS

ANSWER IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

C.A. Culp, pro se
Julia Culp, pro se
Culp Distributing Company

3217 S. Hudson
Tulsa, Oklahoma 74135
(918) 664-2434

September 8, 1990

15

NO. 19

TABLE OF CONTENTS

TABLE OF AUTHORITIES

ANSWER TO PETITION FOR WRIT OF CERTIORARI

Comes now the Respondents C.A. Culp, Julia Culp, and Culp Distributing Company and answers in opposition to the Petition For Writ Of Certiorari To The United States Court Of Appeals For the Tenth Circuit by R.D. Langenkamp, successor trustee for the debtor, Republic Trust & Savings Company.

STATEMENT OF THE CASE

This is a "preference" case but it is not the typical case where an about-to-be-bankrupt debtor gives preferential treatment to a favored investor. Here, the debtor, Republic Trust & Savings (RTS), was a bank--or at least a financial institution chartered and regulated by the Oklahoma Banking Commission that acted like a bank and was perceived by the public to be a bank--that served thousands of customers for 20 years prior to its filing for bankruptcy protection on September 24, 1984. Neither the public, nor the respondents here, were aware of trouble at

RTS and banking business continued normally there until the very day of the bankruptcy filing. There was no "run" on RTS and certificates were routinely redeemed in the summer of 1984 according to the agreed terms between RTS and the depositor. Respondents did no wrong in redeeming their certificates and never **received treatment nor transfers from RTS that was not available to every other depositor.**

Nevertheless, Petitioner decided that the thousands of depositors who routinely and unknowingly redeemed certificates during the 90 days preceding bankruptcy had received preferential treatment and elected to file lawsuits against approximately 200 of such depositors-including Respondents here.

Before Granfinanciera, S.A. v Nordberg, 109 S.Ct. 2782 (1989) Petitioner opposed jury trial for any preference defendant but now concedes (p8 footnote) that defendants who withdrew all their deposits from RTS prior to bankruptcy are entitled to jury trial. Petitioner still takes the self-serving position that depositors who had money left in RTS when it folded could not claim those funds without sacrificing their constitutional

right to jury trial. Petitioner makes such argument even though Respondent's claim was filed in a different case (No. 84-1691) than the case (No. 85-0349) involving jury trial, and even though Respondents never filed a lawsuit, never invoked the equity power of the bankruptcy court, and was urged and abetted in making the claim by RTS. It was the Petitioner, not Respondents, who asked the bankruptcy court to exercise its equity power.

Depositors, having become creditors at the bankruptcy filing, believed that completing the claim form furnished to them by RTS was an administrative procedure whereby the bankruptcy court was apprised of any disputes between debtor and creditor as to the amount of money due creditor.

We believe Petitioner distorts the intent of Congress by classifying these ordinary banking transactions to be preferential transfers. We believe he misreads previous decisions of this court when he interprets those decisions to say that a preference defendant, dragged into bankruptcy court through no fault or action of his own, loses his constitutional right to jury trial simply by completing an administrative claim urged on him by the estate.

In support of these beliefs we would show this court some of Petitioner's misstatements of important facts, and omission of pertinent dates, as stated in his Petition For Writ Of Certiorari.

CORRECTIONS TO PETITIONER'S MISSTATEMENTS OF FACTS

1) Petitioner attempts to mislead this court by stating 8 times in his Petition (p3.2, p3.6, p5.4, p6.7, p10.6, p11.7, p12.2, and p13.7), that each of the Respondents filed a claim against RTS. **None** of the statements are true. Petitioner well knows that neither Respondent Julia Culp nor Culp Distributing Company ever filed any kind of claim against the RTS estate. Respondent C.A. Culp's administrative claim (for $100.00) was filed after being contacted by the RTS estate and advised to do so.

2) Petitioner states, p3.4, that "Each certificate had a maturity date". This also is not true. Although "Money Market Thrift Certificates" had a maturity date, "Passbook Savings Certificates" had no maturity date and in fact the value of passbook accounts varied from day to day according to activity of the individual

depositor.

3) Petitioner implies, p4.5, that the Culps, the Dennises, the Hacklers, the Saieds, the Moores, and Ms. Gesin were the only defendants consolidated for bench trial on preference charges in June, 1987. In fact, Mr. and Mrs. D.H. Thompson and Ms. Jean P. Roederer, all elderly retirees, were additional defendants who were tried without a jury, were found guilty, were financially unable to appeal, and were forced into personal bankruptcy by Petitioner's lawsuits.

DATES OMITTED FROM PETITIONER'S STATEMENT

1) JULY 15, 1984. President Reagan signed Pub. L. 98-353, "Bankruptcy Amendments and Federal Judgeship Act of 1984". These amendments, by deleting the former section 11 U.S.C. 547 (c)(2)(B) (the 45 day limitation between beginning and end of debt), clearly brought transfers such as alleged against Respondents here within the "ordinary course of business" exceptions to preferential transfers.

2) September 24, 1984. RTS filed for reorganization protection under **Chapter 11** of the Bankruptcy Code. It remains under <u>reorganization</u> protection to this day despite demands of creditors that the case

7 liquidation.

3) October 8, 1984. The predecessor to the Petitioner (successor trustee of RTS) sent to every creditor (about 2500 in number) a "Proof of Claim" form, told the creditor the amount, according to RTS records, of his claim as of the date of bankruptcy filing, and advised that the creditors Proof Of Claim "**should be completed by you and filed with the United States Bankruptcy Court in Tulsa, Oklahoma**".

THE 10th CIRCUIT COURT IS CORRECT

PREFERENCE SUITS FILED BY PETITIONER WERE NOT PART OF SUMMARY PROCEEDING INVOLVING "PROCESS OF ALLOWANCE AND DISALLOWANCE OF CLAIMS"

We read Katchen v. Landy, 382 U.S. 323 (1966), and its progeny to say that a litigant who initiates a dispute in a non-jury court has no right to complain if his opponent defends with a counter-claim to which litigant would have been entitled to jury trial had his opponent been the aggressor.

Katchen was an unusual case and not at all similar to the situation here.

Neither Respondent Julia Culp nor Culp Distributing Company had money in RTS when

it collapsed and neither filed a claim. Respondent C.A. Culp, along with thousands of other creditors, did file a routine claim for the $100.00 remaining in his passbook savings account after being advised by Petitioner's predecessor that he should do so. This claim was not a lawsuit, was not at the time even in dispute, and was administratively handled, en masse, along with the claims of many other creditors.

Petitioner's "preference" lawsuit was not necessary to the determination of Respondent C.A. Culp's claim. It was initiated by Petitioner purely to recover money from Respondents and was not part of the summary process of disallowance of a claim. Petitioner filed hundreds of similar suits against ex-depositors who did not file a claim.

The Circuit Court was correct when it said "**the trustee's actions to avoid the transfers....were plenary rather than a part of the bankruptcy court's summary proceedings involving the 'process of allowance and disallowance of claims.'**" (Circuit Court's decision at p. A-93 of Petitioner's petition).

Despite Petitioner's denigration (p 7) of the circuit court for the brevity of its